

INDIANA DEPARTMENT OF REVENUE

REVENUE RULING #2001-04IT

February 19, 2001

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Adjusted Gross Income Tax – Attribution of Nonresident Partners' Distributive Shares of Partnership Income, Gain, Loss and Deduction to Sources Within Indiana

Authority: Rule 45 IAC 3.1-1-105, Rule 45 IAC 3.1-1-106

The taxpayer requests the Department to rule whether or not portfolio interest, net Internal Revenue Code Section 1231 loss, long-term capital gain from the sale of securities and long-term capital gain attributable to the sale or exchange of goodwill and going concern value are subject to apportionment or direct allocation for nonresident non-corporate partners.

Further, if the above items are subject to apportionment the taxpayer requests the Department to rule whether or not the items are apportioned at the entity or partner level.

The taxpayer, also, requests the Department to rule, if the above items are subject to direct allocation, to where and on what basis are the items allocated and is such allocation determined at the entity or partner level.

STATEMENT OF FACTS

The taxpayer is a limited liability partnership. The taxpayer entered into several transactions throughout the past year which resulted in long-term capital gains. In addition, the taxpayer generated portfolio interest from short-term investment of its working capital. The management activity with respect to such investments takes place outside of Indiana and the underlying intangibles have a situs wholly outside Indiana. Also during the year, the taxpayer generated a net Internal Revenue Code Section 1231 loss from the sale of tangible personal property used in the ordinary conduct of its business operations and having a situs at various taxpayer operating offices throughout the United States.

DISCUSSION

Rule 45 IAC 3.1-1-105 provides that a partnership must file an annual return with the Department disclosing each partner's distributive share of partnership income. Rule 45 IAC 3.1-1-105, further, provides that, "As used in this section "partner's distributive share" means the amount determined under Section 704 of the Internal Revenue Code and its prescribed regulations before any modifications required by Indiana tax statutes." Rule 45 IAC 3.1-1-106, addressing individual nonresident partners' distributive shares, states that, "The distributive share of a nonresident partner will be reported after apportionment to determine the partnership income derived from sources within Indiana. This determination will be accomplished by use of the apportionment formula described in IC 6-3-2-2(b)."

It is clear from the above regulations that all of a partnership's income is subject to apportionment. Portfolio interest, net Internal Revenue Code Section 1231 loss, long-term capital gain from the sale of securities and from the sale or exchange of goodwill and going concern value, as components of partnership income, therefore, are subject to apportionment at the partnership level.

RULING

The Department rules that portfolio interest, net Internal Revenue Code Section 1231 loss, long-term capital gain from the sale of securities and long-term capital gain attributable to the sale or exchange of goodwill and going concern value are subject to apportionment at the partnership level for nonresident non-corporate partners.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

DEPARTMENT OF STATE REVENUE